

DOCKET FILE COPY ORIGINAL RECEIVED

NOV 8 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Sections 3(n)
and 332 of the Communications Act)

GN Docket No. 93-252

Regulatory Treatment of
Mobile Services)

COMMENTS OF ALLCITY PAGING, INC.

AllCity Paging, Inc. ("AllCity"), by its attorneys, hereby submits its Comments on the certain of the issues framed in the Notice of Proposed Rulemaking (the "NPRM") issued in this proceeding.

I. AllCity's Interest in the Proceeding

AllCity provides Part 22 one-way paging services from approximately 120 different sites in Arizona, California, Nevada and other states. As such, it will be subject to the rules promulgated in this proceeding. Of particular concern to AllCity is the NPRM's request for comment on, "whether we should require commercial mobile service providers to provide interconnection to other mobile service providers. . ."^{1/}

II. No Justification Exists for Imposing Interconnection Obligations Upon Paging Carriers

A. Analysis of the Proposal Requires a Definition of the Interconnection Concept

The NPRM offers no guidance on what is meant by the concept of requiring commercial mobile service carriers to provide

^{1/} See NPRM at para. 71.

No. of Copies rec'd
List ABCDE

04

interconnection to other mobile service providers. Thus, any effort by AllCity and other parties to analyze and comment on the concept is hindered. For purposes of these comments, AllCity is assuming that provision of interconnection by a paging carrier connotes the paging carrier opening up its paging terminals to mandatory sharing by other mobile service providers and, perhaps, resellers and customers. As shown below, no justification exists for mandatory switch sharing or any other form of compelled interconnection into paging carrier systems.

B. Competition in the Paging Industry Does Not Require Imposition of a Mandatory Interconnection Requirement

Even if paging services are deemed "commercial mobile services," under Section 332(d)(1) of the Communications Act of 1934, as amended (the "Act"),^{2/3/} the state of competition does not require imposition of a mandatory interconnection requirement. Unlike local exchange telephone company switching facilities, many of which are now subject to competitive special access collocation

^{2/} It cannot be assumed that paging carriers will, in fact, be classified as commercial mobile service providers. Most paging carriers, including, AllCity, utilize a "store-and-forward" technology in the interchange of traffic with the telephone network, raising the question of whether they provide an "interconnected service" within the meaning of Section 332(d)(2). See NPRM at paras. 14-21. Further, AllCity, like other paging carriers, does not utilize frequency reuse or other augmentation techniques, and thus may not be providing the functional equivalent of a commercial mobile service within the meaning of Section 332(d)(3). See NPRM at para. 32.

^{3/} Section 332(c)(1)(B) requires that only "common carriers" provide interconnection to commercial mobile service providers. Thus, if paging carriers are deemed to be private mobile service providers, they cannot be required to provide interconnection to other carriers.

requirements,^{4/} paging carriers do not operate monopoly "bottle-neck" facilities that can be utilized to inhibit competition. The significant number of paging frequencies available under both Parts 22 and 90 of the Commission's Rules has led to a state of robust competition in the industry. In addition, recently authorized narrowband PCS facilities may also be used for paging services.^{5/}

The Commission has recognized the fully competitive nature of paging carriers by classifying them as non-dominant.^{6/} Thus, by its own analysis, the FCC has found that paging licensees lack market power or any ability to frustrate competitive conditions in the industry. The healthy state of competition in the paging industry offers irrebuttable proof that no paging carrier possesses bottle-neck power over facilities that are essential to competition. Because it is logically impossible to conclude that paging carriers are in any position to leverage control over facilities essential to competition or to discriminate or otherwise thwart competition, no justification exists for imposing a classic remedy -- mandatory interconnection -- for a problem that does not exist.

^{4/} See Sections 64.1401 and 64.1402 of the Commission's Rules.

^{5/} See Part 99 of the Commission's Rules.

^{6/} See Preemption of State Entry Regulation in Public Land Mobile Service, 59 RR 2d (P&F) (1986), remanded, NARUC v. FCC, No. 86-1205 (D.C. Cir. March 30, 1987), clarified, 2 FCC Rcd. 6434 (1987).

C. The Commission's Resale Policy Enhances Competition in the Paging Industry

It cannot be gainsaid that the paging industry is fully competitive. In addition, to the extent that paging carriers are classified as commercial mobile carriers subject to the Commission's Title II jurisdiction, those carriers will be subject to the Commission's resale policy. This policy, when coupled with the already robust facilities-based carrier competition which permeates the industry, serves as a further safeguard against competitive abuses by paging carriers. No legitimate purpose would be served by imposing interconnection requirements on an industry which is overwhelmingly competitive by virtue of both frequency availability and resale operations.

Conclusion

The NPRM's lack of articulation of what is meant by mandatory interconnection into commercial mobile service provider facilities hinders meaningful analysis and discussion of the concept. To the extent that the concept, as applied to the paging industry, connotes mandatory switch sharing, it is a remedy in search of a problem. The state of competition in the paging industry, both facilities-based and through resale, is such that no reason exists

-5-

for imposing unnecessary and burdensome interconnection requirements.

Respectfully submitted,

ALLCITY PAGING, INC.

By: 

Richard M. Tettelbaum

Gurman, Kurtis, Blask & Freedman,
Chartered
1400 16th Street, N.W., Suite 500
Washington, D.C. 20036
(202) 328-8200

Its Attorneys

November 8, 1993

CERTIFICATE OF SERVICE

I, Richard M. Tettelbaum, an attorney in the law offices of Gurman, Kurtis, Blask and Freedman, Chartered, do hereby certify that I have on this 8th day of November, 1993, had copies of the foregoing "COMMENTS OF ALLCITY PAGING, INC." delivered by hand, to the following:

John Cimko, Chief
Mobile Services Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 644
Washington, D.C. 20554

Richard Shiben, Chief
Land Mobile and Microwave Division
Private Radio Bureau
Federal Communications Commission
2025 M Street, N.W.
Room 5202
Washington, D.C. 20554


Richard M. Tettelbaum